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In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, ET AL., PETITIONERS

v.

LASALLE NATIONAL BANK, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONERS

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BRIEF FOR THE PETITIONERS

OPINIONS BELOW

The opinion and order of the district court (Pet. App. A, pp. 1a–3a) are not officially reported. The opinion of the court of appeals (Pet. App. B, pp. 4a–20a) is reported at 554 F. 2d 302.

JURISDICTION

The judgment of the court of appeals (Pet. App. C, pp. 21a–22a) was entered on April 11, 1977. By order dated July 1, 1977, Mr. Justice Stevens extended the time for filing a petition for a writ of certiorari to and including September 8, 1977. The petition for a

writ of certiorari was filed on September 6, 1977, and was granted on December 12, 1977 (A. 92). The jurisdiction of the Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an internal revenue summons may properly be issued to obtain third-party records in aid of an administrative investigation conducted by the Internal Revenue Service to determine whether it should recommend to the Department of Justice that a taxpayer be prosecuted for criminal tax violations.

STATUTES INVOLVED

The pertinent provisions of Sections 7122, 7402(b), 7601, 7602, 7604, 7608 and 7801 of the Internal Revenue Code of 1954 (26 U.S.C.) are set forth in the Appendix, *infra,* pp. 1A–4A.

STATEMENT

1. Special Agent John F. Olivero of the Intelligence Division of the Internal Revenue Service issued two summonses to respondents LaSalle National Bank and Joseph W. Lang, one of its vice-presidents, to compel testimony and the production of books and records in connection with his investigation of the federal income tax returns of John Gattuso for the years 1970–1972 (Pet. App. B, pp. 5a–6a; A. 26–27). These summonses were issued pursuant to 26 U.S.C. 7602, which authorizes the Internal Revenue Service to examine any books, papers, records, or other data, and to require testimony "[f]or the purpose of ascertaining the correctness of any return, * * * [or] determining the liability of any person for any internal revenue tax * * *" (Appendix, *infra,* p. 2A). Special Agent Olivero determined that he needed respondents' testimony and records in order to confirm the accuracy of items of rental income from real property reported on Gattuso's tax returns because the property in question was held in trust by respondent LaSalle National Bank (A. 27–28). At the time he issued the summonses, Olivero did not have the requested material within his possession. Moreover, at that time, Olivero had not completed his inquiry and had not made any preliminary investigative report or any recommendation with respect to possible criminal prosecution (Pet. App. B, p. 6a; A. 29–31, 40).

Respondent Lang, a vice-president of LaSalle National Bank, appeared before Special Agent Olivero in response to the summonses but refused to testify or to produce the records (Pet. App. B, p. 5a). Pursuant to 26 U.S.C. 7402(b) and 7604(a), the government and Special Agent Olivero then commenced this action in the United States District Court for the Northern District of Illinois to enforce the summonses (Pet. App. B, pp. 5a–6a). At a hearing, Special Agent Olivero testified that the purpose of his investigation was "[t]o determine tax liabilities for the years under investigation" (A. 26; see also A. 46). Olivero further stated that the focus of his inquiry was "[t]o investigate the possibility of criminal violations of the Internal Revenue Code" (A. 27). Finally, Olivero testified that

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neither he nor the Internal Revenue Service had made a recommendation that Gattuso be prosecuted for criminal tax violations (Pet. App. B, p. 6a; A. 30–31).

At the conclusion of the hearing, the district court stated that it had "heard nothing in Agent Olivero's testimony to suggest that the thought of a civil investigation ever crossed his mind" (Pet. App. B, p. 7a). The court then indicated that it would inspect Olivero's files *in camera* to determine whether there were any civil aspects to the investigation (Pet. App. B, pp. 7a–8a; A. 62).

After such inspection, the district court denied enforcement of the summonses (Pet. App. A, pp. 1a–3a). The court stated that "[i]t is apparent from the evidence that Special Agent John F. Olivero in his investigative activities had focused upon the possible criminal activities of John Gattuso, and was conducting his investigation solely for the purpose of unearthing evidence of criminal conduct by Mr. Gattuso" (Pet. App. A, p. 3a). While the court recognized that Olivero had not recommended that Gattuso be prosecuted for criminal tax violations, it concluded that the "focus and determination" (*ibid.*) of his investigation was criminal. In the district court's view, "[a]n Internal Revenue summons under such circumstances is not issued in good faith" (*ibid.*).

2. The court of appeals affirmed (Pet. App. B, pp. 4a–20a). It held that "there is ample support in the record for the district court's finding of sole criminal purpose" (Pet. App. B, p. 11a). While the court of

appeals acknowledged that Olivero testified that his investigation had a civil purpose, it concluded that the district court discredited that testimony (*ibid.*).

In considering whether the district court applied the proper legal test, the court of appeals recognized that this Court's decision in *Donaldson* v. *United States*, 400 U.S. 517, established the governing standard for the enforcement of an Internal Revenue summons. There, the Court stated (400 U.S. at 536): "We hold that under § 7602 an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution."

After reviewing the post-*Donaldson* decisions in the courts of appeals, the court below observed that "[t]he reported cases establish that the various circuits, including our own, have formulated several distinct standards for quashing a summons issued under 26 U.S.C. § 7602" (Pet. App. B, p. 11a). The court further noted "that the *Donaldson* opinion has engendered some confusion" (Pet. App. B, p. 16a). Having accepted the district court's finding that Olivero issued the summonses solely in aid of a criminal investigation, the court of appeals held that such summonses are unenforceable under the *Donaldson* standard because they are not issued in good faith. The court stated: "Our reading of the reported cases persuades us that the use of an administrative summons solely for criminal purposes is a quintessential example of bad faith" (Pet. App. B, p. 19a).

SUMMARY OF ARGUMENT

A

Section 7602 of the Internal Revenue Code of 1954 authorizes the Commissioner of Internal Revenue "[t]o summon * * * any person having possession of * * * books of account containing entries relating to the business of the person liable for tax" or "[t]o take such testimony of the person * * *" "[f]or the purpose of ascertaining the correctness of any return * * *." In *Donaldson* v. *United States*, 400 U.S. 517, 536, this Court held that "under § 7602 an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution." The Court stated that "Congress clearly has authorized the use of the summons in investigating what may prove to be criminal conduct" (*id.* at 535). However, "where a criminal prosecution has been instituted and is pending at the time of the issuance of the summons," the Court indicated that the purpose of the summons would be improper and enforcement should be denied if "the sole objective of the investigation is to obtain evidence for use in a criminal prosecution" (*id.* at 533).

The decision below departs from the standard established by *Donaldson*. The court of appeals held that a special agent may not issue a summons for third-party records in aid of a criminal tax investigation even though there has been no recommendation for prosecution. But the distinction *Donaldson* drew

was not between civil and criminal tax investigations but between a summons issued before the Internal Revenue Service recommends criminal prosecution to the Department of Justice and a summons issued after such a recommendation. It is only in the latter situation that the summons is unenforceable. Indeed, *Donaldson* itself involved basically the same situation as the present case: the issuance of summonses seeking the production of records of third persons by a special agent of the Internal Revenue Service who was conducting an investigation to determine whether criminal prosecution should be recommended. *Donaldson* therefore controls this case.

B

1. The fundamental error of the court of appeals was its assumption that the special agent's investigatory activities were "solely for criminal purposes" so that his issuance of a summons to obtain evidence of criminal tax violations was "a quintessential example of bad faith" (Pet. App. B, p. 19a). As this Court recognized in *Donaldson* v. *United States, supra,* 400 U.S. at 534, the functions of the Internal Revenue Service cannot be so compartmentalized between civil and criminal purposes. Pursuant to its broad statutory authority to administer and enforce the internal revenue laws (26 U.S.C. 7801(a)), the Internal Revenue Service is responsible for determining and assessing tax liability and investigating criminal and civil violations of the tax laws. Thus, there was no occasion for the district

court to reject the credibility of the special agent's testimony that there were civil aspects to his investigation.

These joint responsibilities of the Internal Revenue Service were recognized in the Court's observation in *Donaldson* that the combined efforts of the audit and intelligence divisions "are directed to both civil and criminal infractions; and that any decision to recommend prosecution comes only after the investigation is complete or is sufficiently far along to support appropriate conclusions" (400 U.S. at 535). And, if there is evidence warranting recommendation of a criminal prosecution, the same evidence is also likely to result in a deficiency assessment and a civil fraud penalty. It was therefore unrealistic for the court of appeals to characterize the special agent's investigation in this case as "solely for criminal purposes" (Pet. App. B, p. 19a).

2. The broad language of Section 7602 and its legislative history confirm that Congress intended that an internal revenue summons could be issued, and should be enforced, in aid of a tax fraud investigation without requiring any appraisal of the relative weight of the civil and criminal aspects of the investigation. "There is nothing in the language of § 7602 to limit the issuance of summonses to civil investigations." *Donaldson* v. *United States, supra,* 400 U.S. at 537 (Douglas, J., concurring). Moreover, Section 3654 of the 1939 Code, one of the statutory predecessors of Section 7602, provided that "every collector * * *

shall aid in the prevention, detection, and punishment of any frauds * * *. For such purposes, he shall have the power * * * to summon any person to produce books and papers." Since the responsible legislative committees stated that they intended "no material change from existing law" at the time of the 1954 codification of the summons authority (H.R. Rep. No. 1337, 83d Cong., 2d Sess. A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 617 (1954)), it is plain that Congress contemplated that the summons would continue to be used to uncover evidence of criminal tax violations.

C

There is accordingly no pertinence in the court of appeals' conclusion that special agent Olivero "was at all times involved in a criminal investigation, at least in Olivero's mind" (Pet. App. B, p. 8a). Under *Donaldson,* the subjective intent of the agent issuing a summons prior to a recommendation for prosecution is irrelevant because his inquiry necessarily involves questions of civil tax liability. If a summons is issued, prior to such a recommendation, for one of the purposes enumerated in Section 7602 relating to the functions of the Internal Revenue Service and not for ulterior purposes or harassment, it will meet the "good faith" standard of *Donaldson.* See *United States* v. *Powell,* 379 U.S. 48, 57–58.

If the courts continue to depart from the line of demarcation established in *Donaldson* and engage in a search for the agent's "sole purpose" or "fixed pur-

pose," the enforceability of summonses will be subject to litigation-producing uncertainties, and summons enforcement proceedings will become mired in a host of factual details and subjective inquiries that are irrelevant to the purposes of the summons power set forth in Section 7602. The resulting delay of criminal investigations beyond the expiration of the statute of limitations would require the Internal Revenue Service, "in a situation of suspected but undetermined fraud, to forego either the use of the summons or the potentiality of an ultimate recommendation for prosecution," and thereby "stultify enforcement of federal law" (*Donaldson* v. *United States, supra,* 400 U.S. at 536).

ARGUMENT

AN INTERNAL REVENUE SUMMONS MAY PROPERLY BE ISSUED TO OBTAIN THIRD-PARTY RECORDS IN AID OF AN ADMINISTRATIVE INVESTIGATION CONDUCTED BY THE INTERNAL REVENUE SERVICE TO DETERMINE WHETHER IT SHOULD RECOMMEND TO THE DEPARTMENT OF JUSTICE THAT A TAXPAYER BE PROSECUTED FOR CRIMINAL TAX VIOLATIONS

A. THE INTERNAL REVENUE SERVICE IS BROADLY AUTHORIZED TO ISSUE SUMMONSES IN AID OF TAX INVESTIGATIONS PRIOR TO RECOMMENDATION OF CRIMINAL PROSECUTION

1. This case presents a question of great importance to the enforcement of the internal revenue laws. Our self-reporting tax system is premised upon the assumption that the majority of taxpayers will honestly report their income and deductions. But Congress has

long recognized that if the Treasury is to discharge effectively its duty to administer and enforce the internal revenue laws (Section 7801 of the Internal Revenue Code), it must have statutory power to obtain information with respect to persons who may not have complied with the tax laws.

Sections 7601 and 7602 of the Code provide the Treasury with the necessary authority. The former provision imposes upon the Secretary the duty "to proceed and inquire after and concerning all persons * * * who may be liable to pay any internal revenue tax." Section 7602 authorizes the Secretary to summon the submission of records and testimony for that purpose. Specifically, as pertinent here, the statute authorizes the Secretary or his delegate "[f]or the purpose of ascertaining the correctness of any return, making a return where none has been made, [or] determining the liability of any person for any internal revenue tax * * * [t]o summon * * * any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax * * *, or any person the Secretary or his delegate may deem proper, to appear * * * and to produce such books, papers, records or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry * * *."

Section 7602 is the Treasury's principal information-gathering authority, and this Court, accordingly, has broadly construed it in light of its intended pur-

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pose of enabling the effective conduct of tax investigations. Indeed, the Court has repeatedly rejected attempts to circumscribe or thwart the effective exercise of the Internal Revenue summons power. See, *e.g., Couch* v. *United States*, 409 U.S. 322, 338; *Fisher* v. *United States*, 425 U.S. 391; and especially *United States* v. *Bisceglia*, 420 U.S. 141 (holding that Sections 7601 and 7602 of the Code empower the Treasury to issue a "John Doe" summons to a bank to discover the identity of a person who had engaged in certain bank transactions).

In rejecting attempts to limit the Service's summons power, moreover, the Court has specifically recognized that here, as in other areas of federal law (see, *e.g., United States* v. *Kordel*, 397 U.S. 1, 11–12 (food and drug)), there is no impropriety in proceeding with authorized civil investigations and enforcement even though there is a possibility of subsequent criminal prosecution involving the same matters. Initially, in *Reisman* v. *Caplin*, 375 U.S. 440, the Court dismissed an action, instituted by a taxpayer under investigation, for declaratory and injunctive relief against the Commissioner of Internal Revenue seeking to enjoin the enforcement of summonses issued to an accounting firm. At the time the summons was issued, the Court noted, "a criminal investigation of * * * [the taxpayer] on the tax matters was in progress" (375 U.S. at 444). Nevertheless, the Court held an injuction against the enforcement of the summons was improper because "in any of these [enforcement] proceedings before either the district judge or the United States Commissioner, the witness may challenge the summons on any appropriate ground" (*id.* at 449).

Ten months later, in *United States* v. *Powell*, 379 U.S. 48, the Court definitively established the standards that the Internal Revenue Service must meet in order to obtain judicial enforcement of its orders. The case involved a summons with respect to tax years for which assessments would be barred except for fraud and the summoned parties urged that the Commissioner was required to show probable cause to suspect fraud. The Court, however, concluded that Congress had not imposed the burden of a probable cause showing upon the Commissioner. It held that the Commissioner need only show "that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed * * * " (379 U.S. at 57–58). The Court further stated that "[i]t is the court's process which is invoked to enforce the administrative summons and a court may not permit its process to be abused. Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation" (*id.* at 58; *footnote omitted*).

In *Donaldson* v. *United States,* 400 U.S. 517, the Court rejected a taxpayer's attempt to intervene in a summons enforcement proceeding to obtain third party records on the ground that he had no proprietary interest in the records (which contained details of payments to him) and no other protectable interest or privilege to bar their production. Cf. *United States* v. *Miller,* 425 U.S. 435. The Court also considered the propriety of the use of the summons to determine whether to recommend criminal prosecution. It further held that "under § 7602 an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution" (400 U.S. at 536). The Court stated that "Congress clearly has authorized the use of the summons in investigating what may prove to be criminal conduct" (*id.* at 535). However, "where a criminal prosecution has been instituted and is pending at the time of the issuance of the summons," the Court indicated that the purpose of the summons would be improper and enforcement should be denied if "the sole objective of the investigation is to obtain evidence for use in a criminal prosecution" (*id.* at 533). Accord: *Couch* v. *United States, supra,* 409 U.S. at 326.

2. This case focuses on the Court's holding in *Donaldson* that for purposes of determining the enforceability of an internal revenue summons, the Service's recommendation of a case to the Department of Justice for criminal prosecution is the event that transforms a tax investigation into a preliminary

criminal proceeding. Despite the Court's unequivocal ruling in *Donaldson* that an internal revenue summons "may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution" (400 U.S. at 536), the court of appeals held that a special agent may not issue a summons for third-party records in aid of a criminal investigation even though there had been no recommendation for prosecution.

But, as we shall show, the language of Section 7602 and its legislative history confirm that Congress intended that an internal revenue summons may be issued and should be enforced without any appraisal of the relative weight of the civil and criminal aspects of the tax investigation. There is accordingly no pertinence in the court of appeals' conclusion that Special Agent Olivero "was at all times involved in a criminal investigation, at least in Olivero's mind" (Pet. App. B, p. 8a). The distinction *Donaldson* drew was not between civil and criminal tax investigations, but between a summons issued before the Internal Revenue Service has recommended criminal prosecution to the Department of Justice and a summons issued after such a recommendation. It is only in the latter situation that the summons is unenforceable. Otherwise, a summons issued in the good faith conduct of a tax investigation (rather than for ulterior purposes or purposes of harassment) should be enforced if it meets the standards specified by this Court in *Powell, supra.* Indeed, *Donaldson* itself involved basically the same situation as the present case, and is controlling

here. There, as here, a summons seeking the production of records of third persons was issued by a Special Agent of the Internal Revenue Service who was conducting an investigation to determine whether criminal prosecution should be recommended.

B. THE CIVIL AND CRIMINAL ELEMENTS OF TAX INVESTIGATIONS ARE NECESSARILY INTERTWINED

The fundamental error of the court of appeals was its assumption that the special agent's investigatory activities were "solely for criminal purposes" so that his issuance of a summons to obtain evidence of criminal tax violations was "a quintessential example of bad faith" (Pet. App. B, p. 19a).

As the Court recognized in *Donaldson* v. *United States, supra,* 400 U.S. at 534, the functions of the Internal Revenue Service cannot be so compartmentalized between civil and criminal purposes. The Internal Revenue Service is organized to discharge the broad responsibilities of the Secretary of the Treasury to administer and enforce the internal revenue laws (26 U.S.C. 7801(a)). Each district office of the Internal Revenue Service has an audit division and an intelligence division to carry out the district director's responsibility for determining and assessing tax liability and investigating criminal and civil violations of the tax laws. While the Audit Division's program emphasizes the civil aspects of enforcement, it includes "participation with special agents [of the Intelligence Division] in the conduct of fraud investigations." Internal Revenue Service Organization and Functions, § 1113.563, 39 Fed. Reg. 11572, 11581.

The Intelligence Division (§ 1118.6) "enforces the criminal statutes applicable to income * * * [and other] tax laws * * * by developing information concerning alleged criminal violations thereof * * *." 39 Fed. Reg. 11607. The Intelligence Division also has responsibility for determining whether the 50 percent fraud penalty should be asserted under Section 6653 (b) of the Code. See Section 601.107(a), Treasury Regulations on General Procedural Rules (26 C.F.R.).

The Assistant Regional Commissioner in charge of the Intelligence Division provides further coordination between the Intelligence and Audit Divisions by developing (§ 1114.8) "regional programs, standards and other measures necessary to implement most effectively the intelligence program of the Service *which includes the investigation of alleged tax frauds, certain other civil and alleged criminal violations of tax laws * * *, and such other special investigations as the Commissioner may direct*" (§ 1114.8, 39 Fed. Reg. 11601; emphasis supplied). In addition, the Assistant Regional Commissioner supervises the review of special agents' reports of investigation submitted by the district offices in his region and approves or disapproves recommendations for prosecution. Further review of prosecution recommendations and referrals to the Department of Justice are made by the office of regional counsel for each region (§ 1114.82, 39 Fed. Reg. 11601).

Thus, as the Court observed in *Donaldson,* the combined efforts of the audit and intelligence divisions "are directed to both civil and criminal infractions;

and * * * any decision to recommend prosecution comes only after the investigation is complete or is sufficiently far along to support appropriate conclusions" (400 U.S. at 535).

The ultimate decision to refer the case to the Department of Justice is not made until the results of the investigation have been reviewed by the assistant regional commissioner for intelligence and a regional counsel. Moreover, the special agent may well conduct his investigation in concert with the district audit division, which is charged with the responsibility of uncovering liability for taxes and statutory additions. Finally, the authority of the assistant regional commissioner for intelligence to administer regional intelligence programs addressed to both civil and criminal violations gives assurance that the investigations of the district office intelligence divisions will be utilized as part of a coordinated effort to discover both criminal and civil infractions.

Given the close connection between the civil and criminal enforcement conducted by the Internal Revenue Service, it was unrealistic for the court of appeals to characterize the special agent's investigation in this case as "solely for criminal purposes" (Pet. App. B, p. 19a). Even apart from the fact that the agent here testified that the purpose of his inquiry was "[t]o determine the tax liabilities for the years under investigation" (A. 26) and that he needed the summoned materials to determine the accuracy of reported items of rental income, "[t]here is no statutory suggestion for any meaningful line of distinction, for

civil as compared with criminal purposes, at the point of a special agent's appearance." *Donaldson* v. *United States, supra,* 400 U.S. at 535. See also *Couch* v. *United States, supra,* 409 U.S. at 326. If there is evidence warranting a criminal prosecution, the same evidence is also likely to result in a deficiency assessment and a civil fraud penalty.

To be sure, the focus of a special agent's work is on possible criminal violations, so that he is only assigned to a case "as a result of some allegation or indication of criminal conduct" (*Donaldson* v. *United States, supra,* 400 U.S. at 537, n. 1 (Douglas, J., concurring)). But until the Internal Revenue Service refers a case to the Department of Justice with a recommendation for prosecution, "the civil aspects [of the investigation] are inextricably associated with the criminal" (*United States* v. *Billingsley,* 469 F. 2d 1208, 1210 (C.A. 10)).[1] Thus, the presence of a special agent does not necessarily mean that prosecution will ensue.

Indeed, statistics compiled by the Commissioner for the 1976 fiscal year demonstrate the significance of the special agent's role in civil as well as criminal enforcement. In that year, the Intelligence Division

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[1] The close connection between the civil and criminal aspects of a tax investigation and the statutory division of functions between the Internal Revenue Service and the Department of Justice is reflected in Section 7122(a) of the Code, which provides: "The Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense."

commenced 8,797 full-scale tax fraud investigations. Only 2,037, or approximately one-quarter, of these investigations resulted in recommendations for prosecution. The 6,760 cases not recommended to the Department of Justice involved approximately $11 million in deficiencies and penalties. See 1976 Annual Report of the Commissioner of Internal Revenue, pp. 33, 61, 152.[2] Thus, even in those cases where no prosecution recommendations were made, substantial liabilities for tax deficiencies and penalties were uncovered.

C. THE LANGUAGE AND LEGISLATIVE HISTORY OF SECTION 7602 CONFIRM THAT CONGRESS HAS AUTHORIZED THE USE OF AN INTERNAL REVENUE SUMMONS IN INVESTIGATING WHAT MAY PROVE TO BE CRIMINAL CONDUCT

1. Section 7602—the basic statutory authorization for the summons power—is cast in the broadest possible terms. It sanctions the summoning of "*any* * * * person" for the taking of testimony and examination of books which may be relevant for "ascertaining the correctness of *any* return, * * * determining the liability of *any* person for any internal revenue tax * * *, or collecting *any* such liability * * *." The statute does not speak in terms of civil or criminal investigations. To the contrary, the statute broadly encompasses every type of tax investigation, whether its direction is civil or criminal. "There is nothing in the language of § 7602 to limit the issuance of summonses to civil investigations." *Donaldson* v. *United States, supra,* 400 U.S. at 537 (Douglas, J., concurring).

[2] The 1969 statistics considered by the Court in *Donaldson* are comparable (see 400 U.S. at 535 n. 17).

Under Section 6659(a)(2) of the Code, the term "tax" includes any additions or penalties assessed in addition to a tax deficiency. When any underpayment of tax is "due to fraud," the taxpayer is not only subject to criminal sanctions under Sections 7201 or 7206 of the Code, but is also liable for a 50 percent penalty under Section 6653(b). Hence, the determination of the "liability of any person for any internal revenue tax" necessarily includes, where appropriate, an investigation into the possible existence of fraud or criminal conduct to determine whether a penalty is included in the total amount of tax liability. See *Donaldson* v. *United States, supra,* 400 U.S. at 535. The assignment of investigations to special agents of the intelligence divisions where there is reason to suspect fraud merely insures that the possible criminal aspects of the case will be fully explored; the first, and often the final, step of such assignment is to determine the correct tax liability of the person under investigation, including liability for any penalty.

2. a. As the Court observed in *Donaldson* v. *United States, supra,* 400 U.S. at 535, the legislative history of Section 7602 is in accord with our submission that the statute authorizes the use of a summons in investigating what may prove to be criminal conduct. That history shows that the summons power was derived from Sections 3614, 3615(a)–(c), and 3654 of the Internal Revenue Code of 1939 (see Table II to 1954 Code, 68A Stat. 969) and that these three pro-

visions had independent roots in revenue acts dating back to 1919, 1864, and 1868, respectively. An understanding of those three sections of the 1939 Code is essential because, in adopting Section 7602, Congress intended "no material change from existing law." H.R. Rep. No. 1337, 83d Cong., 2d Sess. A436 (1954); S. Rep. No. 1622, 83d Cong., 2d Sess. 617 (1954). See also H.R. Rep. No. 1337, *supra*, at 99; S. Rep. No. 1622, *supra*, at 133; 100 Cong. Rec. 3425 (1954).[3]

The first part of the "existing law" preserved in the 1954 Code appeared in part in Section 3614(a) of the 1939 Code, which provided as follows:

> *To determine Liability of the Taxpayer.* The Commissioner, for the purpose of ascertaining the correctness of any return or for the purpose of making a return where none has been made, is authorized, by any officer or employee of the Bureau of Internal Revenue, including the field service, designated by him for that purpose, to examine any books, papers, records, or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or of any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take his testimony with reference to the matter required by law to be included in

[3] Because the 1939 Code merely codified existing law without effecting substantive changes (see, *e.g.*, S. Rep. No. 20, 76th Cong., 1st Sess. 1 (1939)), earlier revenue acts must be examined in order to ascertain the meaning of specific provisions of that codification.

> such return, with power to administer oaths to such person or persons.

The Commissioner was first given the power to examine records and compel attendance of witnesses and take testimony in 1919 through the enactment of a virtually identical provision. Act of February 24, 1919, Section 1305, 40 Stat. 1057, 1142.[4]

The second part of the "existing law" carried forward in Section 7602 was contained in Section 3615 (a)–(e) of the 1939 Code, which granted a summons power to collectors,[5] by providing, in pertinent part, as follows:

> (a) *General Authority.*—It shall be lawful for the collector, subject to the provisions of

[4] Neither the committee reports nor the congressional debates contain any reference to the 1919 provision. The 1919 provision was reenacted several times before becoming part of the 1939 Code. Act of November 23, 1921, Section 1308, 42 Stat. 227, 310; Act of June 2, 1924, Section 1004, 43 Stat. 253, 340; Act of February 26, 1926, Section 1104, 44 Stat. (Part 2) 9, 113; Act of May 29, 1928, Section 618, 45 Stat. 791, 878.

[5] The summons authority was originally given to assessors and supervisors. Act of June 30, 1864, Section 14, 13 Stat. 223, 226; Act of July 20, 1868, Section 49, 15 Stat. 125, 144. These offices were abolished and the summons authority transferred to collectors. Act of December 24, 1872, Section 1, 17 Stat. 401; Act of August 15, 1876, 19 Stat. 143, 152.

The collectors continued to have the summons authority until the Treasury was reorganized under the Reorganization Act of 1949, 63 Stat. 203. The functions of all Treasury officials were transferred to the Secretary, who was authorized to redelegate all existing authority and the office of collector was abolished. See Reorganization Plan No. 26 of 1950 (15 Fed. Reg. 4935); Reorganization Plan No. 1 of 1952 (17 Fed. Reg. 2243). The summons in the present case was issued by the special agent pursuant to Delegation Order No. 4 (Rev.) (22 Fed. Reg. 3894).

this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or the returns thereof. * * *

(b) *Acts Creating Liability.*—Such summons may be issued—

(1) *Refusal or neglect to comply with notice requiring return.*—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) *Failure to render return on time.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) *Erroneous, false or fraudulent return.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) *Refusal to permit examination of books.*—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

(c) *Persons Liable.*—Such summons may be issued to—

(1) *Persons mentioned in subsection* (b).—Any person mentioned in subsection (b), or

(2) *Persons having books.*—Any other person having possession, custody, or care of books of account containing entries relating to the business of any person mentioned in subsection (b), or

(3) *Other persons.*—Any other person the collector may deem proper.

This section closely follows a provision first adopted in 1864, Act of June 30, 1864, Section 14, 13 Stat. 223, 226,[6] and reenacted several times prior to its codification in 1939.[7] See also Section 3616 of the 1939 Code, which imposed criminal sanctions upon any person failing to appear pursuant to a summons issued under Section 3615. See *Donaldson* v. *United States, supra,* 400 U.S. at 535.

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[6] There were no committee reports on the 1864 Act. However, the floor debates in the House show a general understanding that the summons authority would be used to investigate fraudulent conduct to defeat or evade the tax, a crime punishable by fine and imprisonment under Section 15 of the Act of June 30, 1864, 13 Stat. 223, 227. See 65 Cong. Globe, 38th Cong., 1st Sess. pp. 2660–2661 (1864); 66 Cong. Globe, 38th Cong., 1st Sess., pp, 2996–2997 (1864). Indeed, the use of the words "false or fraudulent" in Subsection (b)(3) and Section 14 of the Act of 1864 suggests that the collector was authorized to use the summons to investigate criminal conduct.

[7] Act of July 13, 1866, Section 9, 14 Stat. 98, 101; Act of December 24, 1872, Section 1, 17 Stat. 401. In 1873, the provision was codified as part of Section 3173 of the Revised Statutes of 1873–1874, which Section was amended by the Act of March 1, 1879, Section 3, 20 Stat. 327, 330–331; Act of August 27, 1894, Section 34, 28 Stat. 509, 557–559; Act of October 3, 1913, Section II(I), 38 Stat. 114, 177–179; Act of September 8, 1916, Section 16, 39 Stat. 756, 773–774; Act of February 24, 1919, Section 1317, 40 Stat. 1057, 1146–1147; Act of November 23, 1921, Section 1311, 42 Stat. 227, 311–312; Act of June 2, 1924, Section 1018, 43 Stat. 253, 344–346; Act of February 26, 1926, Section 1115, 44 Stat. (Part 2) 9, 117–119.

Finally, the third part of the "existing law" carried forward in Section 7602 of the 1954 Code is derived from Section 3654(a) of the 1939 Code,[8] which provided as follows:

> SEC. 3654. GENERAL POWERS AND DUTIES RELATING TO COLLECTION.
>
> (a) *Collectors.*—Every collector within his collection district shall see that all laws and regulations relating to the collection of internal revenue taxes are faithfully executed and complied with, and shall aid in the prevention, detection, and punishment of any frauds in relation thereto. For such purposes, he shall have power to examine all persons, books, papers, accounts, and premises, to administer oaths, and to summon any person to produce books and papers, or to appear and testify under oath before him, and to compel compliance with such summons in the same manner as provided in section 3615.

This Section was derived from an essentially identical provision first enacted in 1868, Act of July 20, 1868,

[8] Table II of the 1954 Code, 68A Stat. 969, states that Sections 3614 and 3615(a)–(c) of the 1939 Code were essentially carried forward in Section 7602 of the 1954 Code. See also *Donaldson* v. *United States*, *supra*, 400 U.S. at 535. Although Table II does not contain a reference to Section 3654 of the 1939 Code, the inclusion of the summons power in that provision coupled with the statements in the 1954 committee reports that Congress intended no material change in existing law requires an examination of Section 3654 as an aid to understanding the scope of the current summons power.

Section 49, 15 Stat. 125, 144–145, and codified as part of Section 3163 of the Revised Statutes of 1873–1874.[9]

Significantly, in the 1878 congressional debates concerning whether to extend the summons power held by the collectors to revenue agents, the power of the collectors to summon third-party records as a means of discovering evidence to aid in the detection and punishment of fraud appears to have been well understood and approved by Congress. See 7 Cong. Rec. 3920–3924 (1878). Indeed, the debate included (*id.* at 3922) a description of an incident in which an internal revenue summons was issued, under a predecessor of Section 3654, to a railroad to examine its books of account in order to determine whether certain distillers had committed tax fraud by shipping spirits that were untaxed.[10]

[9] This statute was amended by the Act of August 15, 1876, 19 Stat. 143, 152, pursuant to which the supervisors' functions were eliminated and their investigative powers transferred to the collectors. See note 5, *supra*. Section 3163 of the Revised Statutes was amended by the Act of March 1, 1879, Section 2, 20 Stat. 327, 328, which also imposed upon revenue agents, in addition to collectors, the duty to see that all laws and regulations relating to the collection of internal revenue taxes were faithfully executed. Because at that time Congress did not want to extend to revenue agents the summons power given to collectors, the reference to the summons authority was deleted from Section 3163 of the Revised Statutes. See 7 Cong. Rec. 3920–3924 (1878). However, the collectors continue to maintain the authority to issue summonses under the Act of August 15, 1876, 19 Stat. 143, 152, which was carried forward into Section 3654(a) of the 1939 Code. See Table B, 53 Stat. (Part 1) XLII.

[10] In interpreting Section 49 of the Act of July 20, 1868, 15 Stat. 144–145, the courts likewise recognized that the Treasury had the

b. By combining Sections 3614, 3615(a)–(c), and 3654 into Section 7602 in 1954 without intending to change existing law, Congress continued to sanction the use of an internal revenue summons to obtain evidence of what might prove to be criminal conduct. Like Section 7602, all of these prior provisions cast the summons power in the broadest possible manner, using terms such as "any person," "any return," and "any objects or income liable to tax." Moreover, the expansive scope of Section 3654 of the 1939 Code, granting to the collectors the power to issue summonses for any purpose relating to their duty to oversee the faithful execution of internal revenue laws and the "prevention, detection, and punishment of any frauds," strongly supports a reading of Section 7602 as empowering the Service to use the summons for investigation into possible criminal conduct.

Thus, the history as well as the text, of both the current provision and its authoritative predecessors, confirms the correctness of the Court's observation in *Donaldson* that "[t]here is no statutory suggestion for any meaningful line of distinction, for civil as compared with criminal purposes, at the point of a special agent's appearance" (400 U.S. at 535). Since we submit that this case is controlled by *Donaldson,* and that the court of appeals' appraisal of the relative weight of the civil and criminal aspects of the inves-

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duty to detect criminal activity and the authority to use its summons power to investigate what might prove to be criminal conduct. See *Stanwood* v. *Green*, 22 Fed. Cas. 1077 (S.D. Miss.) (No. 13,301); *In re Meador*, 16 Fed. Cas. 1294 (N.D. Ga.) (No. 9,375).

tigation is contrary to that decision, we turn now to a detailed discussion of *Donaldson.*

D. THIS COURT'S DECISION IN *DONALDSON* V. *UNITED STATES*, 400 U.S. 517, CONTROLS THIS CASE

1. As we have noted, this Court in *Donaldson* v. *United States, supra,* 400 U.S. at 536, held "that under § 7602 an internal revenue summons may be issued in aid of an investigation if it is issued in good faith, and prior to a recommendation for criminal prosecution." The Court stated that "Congress clearly has authorized the use of the summons in investigating what may prove to be criminal conduct" (*id.* at 535). As the Court there recognized, there is no realistic distinction between a civil and a criminal tax investigation for purposes of the enforceability of an internal revenue summons. The critical distinction established by *Donaldson* is between a summons issued before the Internal Revenue Service has recommended criminal prosecution to the Department of Justice and a summons issued after such a recommendation.

Here, at the time Special Agent Olivero issued the summonses to respondents, the Internal Revenue Service had not recommended to the Department of Justice whether the taxpayer under investigation should be prosecuted. Moreover, the information sought by Olivero with respect to the correct amount of the taxpayer's rental income was relevant in determining both his civil tax liability and whether he was guilty of any criminal tax violations. Since "[i]t

is now undisputed that a special agent is authorized, pursuant to 26 U.S.C. § 7602, to issue an Internal Revenue summons in aid of a tax investigation with civil and possible criminal consequences" (*Couch* v. *United States, supra*, 409 U.S. at 326; footnote omitted), there is no bar to the enforcement of the summonses in this case.

Although the court of appeals acknowledged that the final paragraph of this Court's *Donaldson* opinion established the recommendation for prosecution by the Internal Revenue Service as the line of demarcation between a civil and a criminal case, it nevertheless concluded that a summons issued prior to such a recommendation would not meet the "good faith" requirement of *Donaldson* if it were issued "solely for criminal purposes" (Pet. App. B, p. 19a). The court relied upon the earlier discussion in *Donaldson* of the dictum in *Reisman* v. *Caplin, supra,* 375 U.S. at 449, that—

> the witness may challenge the summons on any appropriate ground. This would include, as the circuits have held, the defenses that the material is sought * * * for use in a criminal prosecution, *Boren* v. *Tucker,* 239 F. 2d 767, 772–773, * * *.

In explaining this dictum, the Court in *Donaldson* stated that "[t]he *Reisman* dictum * * * comes into proper focus as applicable to the situation of a pending criminal charge or, at most, of an investigation solely for criminal purposes" (400 U.S. at 533). Emphasizing the final phrase of this sentence, the court of

appeals held that a summons issued "solely for criminal purposes," even prior to the recommendation of a criminal prosecution, would not meet the "good faith" standard of *Donaldson*. We submit, however, that it is more consistent with the remainder of the *Donaldson* opinion to read that phrase as referring only to the period between the Service's recommendation of criminal prosecution to the Department of Justice and the actual bringing of criminal charges (to which the first part of the sentence refers).

As we have shown, *Donaldson* holds that no meaningful line can be drawn between the "civil" and "criminal" purposes of a special agent's investigation prior to the Internal Revenue Service's recommendation for prosecution (400 U.S. at 535). Hence, we submit that if a summons is issued, prior to such recommendation,[11] for one of the purposes enumerated in Section 7602 relating to the functions of the Internal Revenue Service and not for ulterior purposes or harassment, it will meet the "good faith" standard of *Donaldson* despite the fact that the focus of the agent's inquiry is to uncover evidence of criminal conduct. Indeed, in outlining the basis for the enforce-

[11] There is no need to consider in the present case whether it would be proper in some circumstances for the Internal Revenue Service to continue a tax investigation, and issue summonses in furtherance thereof, after it has recommended prosecution. We do not read *Donaldson* or *Reisman* as intended to deprive the Treasury of the use, for all purposes, of its basic tax enforcement tool once it has transmitted its recommendation to the Department of Justice. The teaching of those cases is that Congress has not authorized the use of the summons on behalf of the Department of Justice in the carrying out of its prosecutorial functions.

ment of an internal revenue summons, the Court in *United States* v. *Powell,* 379 U.S. 48, significantly did not exclude criminal investigations from the scope of the summons power. There, the agent alleged in the petition for enforcement that he "had reason to suspect that the taxpayer had fraudulently falsified its 1958 and 1959 returns by overstating expenses" (*id.* at 50). In upholding the use of a summons in such a case, the Court held that the Commissioner's burden is limited to a showing "that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed * * *" (*id.* at 57–58). Since the summonses at issue here undisputably met the standards established in *Powell,* the courts below erred in refusing to enforce them.

Moreover, the Court's discussion in *Donaldson* (400 U.S. at 533) of its *Reisman* dictum demonstrates that the phrase employed in *Donaldson*—"an investigation solely for criminal purposes" (*ibid.*)—refers only to the issuance of a summons after the Internal Revenue Service has recommended prosecution. After noting that a summons is improper if it is issued after a criminal prosecution has been instituted and "the sole objective of the investigation is to obtain evidence for use in * * * [that] prosecution," the Court stated that it was "precisely * * * [that] situation—where the sole object of the investigation is to gather data for criminal prosecution—that is the subject of the *Reis-*

man dictum" (400 U.S. at 533). As the Court further observed, "[t]his is evident from the fact that the dictum itself embraces the citation of *Boren* v. *Tucker,* 239 F. 2d 767, 772–773 (CA9 1956), an opinion in which, at the pages cited, the Ninth Circuit very carefully distinguished *United States* v. *O'Connor,* 118 F. Supp. 248 (Mass. 1953), a case where the taxpayer already was under indictment" (400 U.S. at 533).[12] Thus, the Court concluded that "[t]he *Reisman* dictum is to be read in the light of its citation of *Boren,* and of *Boren's* own citation of *O'Connor;* when so read, the dictum comes into proper focus as applicable to the situation of a pending criminal charge or, at most, of an investigation solely for criminal purposes" (*ibid.*).

Since the Court had earlier cited with approval those cases that expressly sanctioned the use of a summons issued to investigate criminal conduct when no criminal prosecution had been instituted (400 U.S. at 532–533, nn. 13, 14), the phrase "an investigation solely for criminal purposes" necessarily refers, in the context of the entire opinion, to the situation where the Internal Revenue Service has already recommended prosecution.

2. In the present case, therefore, the court of appeals misinterpreted and misapplied the *Donaldson* standard, which establishes the Service's recommenda-

[12] In *O'Connor*, the taxpayer was indicted on February 13, 1953; however, the Internal Revenue Service's petition for enforcement of its summons was not returnable until October 19, 1953 (see 118 F. Supp. 248, 249, 250 (D. Mass.)).

tion for prosecution as the basic line of demarcation for the enforcement of an internal revenue summons. Since the Court's decision in that case turned upon its recognition of the dual criminal and civil investigatory responsibilities of the Internal Revenue Service, there was no occasion for the district court to reject the credibility of the special agent's testimony that there were civil aspects to his investigation. As we have pointed out (*supra,* pp. 16–18), the Internal Revenue Service is the agency charged with the administration and enforcement of the tax laws (see 26 U.S.C. 7801) and every investigation, whether it is conducted by special agents or revenue agents, has as one of its purposes the collection of revenue. Since the Internal Revenue Service had not recommended prosecution of any individual prior to the special agent's issuance of the summons, "the civil aspects [of the investigation] * * * were inextricably associated with the criminal." *United States* v. *Billingsley, supra,* 469 F. 2d at 1210. Under the objective standard of *Donaldson,* the summonses were therefore enforceable even though the special agent might uncover evidence of criminal conduct.

"Any other holding, of course, would thwart and defeat the appropriate investigatory powers that the Congress has placed in 'the Secretary and his delegate.' " *Donaldson* v. *United States, supra,* 400 U.S. at 533. There is accordingly no pertinence in the court of appeals' conclusion that special agent Olivero "was at all times involved in a criminal investigation, at least in Olivero's mind" (Pet. App. B, p. 8a). Under

Donaldson, the subjective intent of the agent issuing a summons prior to a recommendation for prosecution is irrelevant because his inquiry necessarily involves questions of civil tax liability. Thus, in a summons enforcement proceeding, the summons will meet the *Donaldson* "good faith" standard if it is issued prior to a recommendation for criminal investigation, for one of the purposes enumerated in Section 7602 relating to the functions of the Internal Revenue Service and not for ulterior purposes or harassment. See *United States* v. *Powell, supra,* 379 U.S. at 57–58. See also *Donaldson* v. *United States, supra,* 400 U.S. at 526–527; *United States* v. *Kordel, supra,* 397 U.S. at 11–13.

The departure of the decision below and of other courts of appeals from the line of demarcation established in *Donaldson* in favor of an inquiry into the agent's subjective motive threatens to impair the enforcement of the internal revenue laws. For if the courts engage in a search for the agent's "sole purpose" or "fixed purpose," the enforceability of summonses will be subject to litigation-producing uncertainties, and summons enforcement proceedings will become enmired in a host of factual details and subjective inquiries that are irrelevant to the purposes of the summons power set forth in Section 7602.[13] The

[13] See, *e.g.*, *United States* v. *Weingarden*, 473 F. 2d 454 (C.A. 6) (summons not enforceable even though issued prior to recommendation for prosecution; standard is whether sole purpose of summons is for criminal prosecution); *United States* v. *Wall Corp.*, 475 F. 2d 893 (C.A.D.C.) (summons not enforceable if agent had already formed "fixed purpose" to recommend prosecution). Accord: *United States* v. *McCarthy*, 514 F. 2d 368, 374–375

potential for delay of criminal investigations beyond the expiration of the statute of limitations would require the Internal Revenue Service, "in a situation of suspected but undetermined fraud, to forego either the use of the summons or the potentiality of an ultimate recommendation for prosecution," and thereby "stultify enforcement of federal law" (*Donaldson* v. *United States, supra,* 400 U.S. at 536).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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(C.A. 8); *United States* v. *Lafko*, 520 F. 2d 622, 624–625 (C.A. 3); *United States* v. *Zack*, 521 F. 2d 1366, 1368 (C.A. 9).

Contra: *United States* v. *Troupe*, 438 F. 2d 117 (C.A. 8) (summons can be successfully challenged only when criminal prosecution is pending at time of issuance of summons or when prosecution has been recommended); *United States* v. *Billingsley*, 469 F. 2d 1208, 1210 (C.A. 10) (recommendation from the Internal Revenue Service to the Department of Justice is the operative recommendation under *Donaldson*). Accord: *United States* v. *Hodge and Zweig*, 548 F. 2d 1347, 1351 (C.A. 9).

APPENDIX

Internal Revenue Code of 1954 (26 U.S.C.):

SECTION 7122. COMPROMISES

(a) *Authorization.*—The Secretary or his delegate may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense.

* * * * *

SECTION 7402. JURISDICTION OF DISTRICT COURTS

* * * * *

(b) *To enforce summons.*—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, or other data, the district court of the United States for the district in which such person resides or may be found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, or other data.

* * * * *

SECTION 7601. CANVASS OF DISTRICTS FOR TAXABLE PERSONS AND OBJECTS

(a) *General rule.*—The Secretary or his delegate shall, to the extent he deems it practicable, cause officers or employees of the Treasury Department to proceed, from time to time, through each internal revenue district and inquire after and concerning all persons therein who may be liable to pay any internal revenue

tax, and all persons owning or having the care and management of any objects with respect to which any tax is imposed.

(b) *Penalties.*—

For penalties applicable to forcible obstruction or hindrance of Treasury officers or employees in the performance of their duties, see section 7212.

SECTION 7602. EXAMINATION OF BOOKS AND WITNESSES

For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary or his delegate is authorized—

(1) To examine any books, papers, records or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary or his delegate may deem proper, to appear before the Secretary or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

SECTION 7604. ENFORCEMENT OF SUMMONS

(a) *Jurisdiction of District Court.*—If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

* * * * *

SECTION 7608. AUTHORITY OF INTERNAL REVENUE ENFORCEMENT OFFICERS

* * * * *

(b) *Enforcement of laws relating to internal revenue other than subtitle E.*

(1) Any criminal investigator of the Intelligence Division or of the Internal Security Division of the Internal Revenue Service whom the Secretary or his delegate charges with the duty of enforcing any of the criminal provisions of the internal revenue laws or any other criminal provisions of law relating to internal revenue for the enforcement of which the Secretary or his delegate is responsible is, in the performance of his duties, authorized to perform the functions described in paragraph (2).

(2) The functions authorized under this subsection to be performed by an officer referred to in paragraph (1) are—

(A) to execute and serve search warrants and arrest warrants, and serve subpoenas and summonses issued under authority of the United States;

(B) to make arrests without warrant for any offense against the United States relating to the internal revenue laws committed in his presence, or for any felony cognizable under such laws if he has reasonable grounds to believe that the person to be arrested has committed or is committing any such felony; and

(C) to make seizures of property subject to forfeiture under the internal revenue laws.

SECTION 7801. AUTHORITY OF DEPARTMENT OF THE TREASURY

(a) *Powers and duties of Secretary.*—Except as otherwise expressly provided by law, the administration and enforcement of this title shall be performed by or under the supervision of the Secretary of the Treasury.

* * * * *

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